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EXTRACTS

From Dissenting Opinion of the Soviet Member of the International Military Tribunal

IV. Concerning the Sentence of the Defendant Rudolf Hess.

The judgment of the Tribunal correctly and adequately portrays the outstanding position which Rudolf Hess occupied in the leadership of the Nazi party and State. He was indeed Hitler's closest personal confidant and his authority was exceedingly great; In this connection it is sufficient to quote Hitler's decree appointing Hess as his deputy: "I hereby appoint Hess as my deputy and give him full power to make decisions in my name on all questions of Party leadership" (Transcript, Afternoon Session 7 February 1946.)

But the authority of Hess was not only confined to questions of Party leadership.

The official NSDAP publication National Socialist Year Book for 1941 states that:

> In addition to the duties of Party leadership, the deputy of the Fuhrer has far-reaching powers in the field of the State. These are: First--participation in national and state legislation, including the preparation of the Fuhrer's order. The deputy of the Fuhrer in this way validates the condeption of the Party...Second--approval of the deputy of the Fuhrer of proposed appointments for official and labor service leaders. Third--securing the influence of the Party over the self-government of the municipal units." (USA-255, PS-3163)

Hess was an active supporter of Hitler's agressive policy. The crimes against Peace committed by him are dealt with in suffici detail in the Judgment. The mission undertaken by Hess in flying to England should be considered as the last of these crimes, as it was undertaken in the hope of facilitating the realization of aggression against the Soviet Union by temporarily restraining England from fighting.

The failure of this mission led to Hess's isolation and he took no direct part in the planning and commission of subsequent crimes of the Hitler regime. There can be no doubt, however, that Hess did everything possible for the preparation of these crimes.

Hess, together with Himmler, occupied the role of creator of the SS police organizations of German fascism which afterwards committed the most ruthless Crimes against Humanity. The defendant clearly pointed out the "special tasks" which faced the SS formations in occupied territories.

When the Waffen SS was being formed Hess issued a special order through the Party Chancellery which made aiding the conscription of Party Members into these organizations by all means compulsory for Party Organs. He outlined the tasks set before the Waffen SS as follows:

"The units of the Waffen SS composed of National Socialists are more suitable than other armed units for the specific tasks to be solved in the occupied Eastern territories due to the intensive training in regard to questions of race and nationality. (GB-287, PS-3245)

As early as 1934 the defendant initiated a proposal that the so-called SD under the Reichsfuhrer SS (Security Service) be given extraordinary powers and thus become the leading force in Nazi Germany.

On 9 June 1934 Hess issued a decree in accordance with which the "Security Service of the Reichsfuhrer SS" was declared to be the "sole political news and defense service of the Party" (GB-257)

Thus the defendant played a direct part in the creation and consolidation of the system of special police organs which were being prepared for the commission of crimes in occupied territories.

We find Hess to have always been an advocate of the man-hating "master race" theory. In a speech made on 16 January 1937 while speaking of the education of the German Nation, Hess pointed out: "Thus, they are being educated to put Germans above the subjects of a foreign nation, regardless of their positions or their origin" (GB-253, PS-3124)

Hess signed the so-called "Law for the Protection of Blood and Honor" on 15 September 1935 (USA-200, PS 3179). The body of this law states that the "Fuhrer's deputy is authorized to issue all necessary decrees and directives" for the practical realization of the "Nuremberg decrees".

On 14 November 1935, Hess issued an ordinance under the Reich citizenship law in accordance with which the Jews were denied the right to vote at elections or hold public office (GB-258, PS-1417)

On 20 May 1938 a decree signed by Hess extended the Nuremberg laws to Austria. (GB-259, PS-2124)

On 12 October 1939 Hess signed a decree creating the administration of Polish occupied territories (Reichsgesetzblatt, No. 210, 1939, p. 2077) Article 2 of this decree gave the Defendant Frank the power of dictator.

There is sufficiently convincing evidence showing that this defendent did not limit himself to this general directive which introduced into the occupied Polish territories a regime of unbridled terror. As is shown in the letter of the Reichsminister of Justice to the Chief of the Reich Chancellery dated 17 April 1941, Hess was the initiator in the formation of special "penal laws" for Poles and Jews in occupied Eastern territories. The role of this defendent in the drawing up of these "laws" is characterized by the Minister of Justice in the following words:

> "In accordance with the opinion of the Fuhrer's deputy I started from the point of view that the Pole is less susceptible to the infliction of ordinary punishment. Under these new kinds of punishment, prisoners are to be lodged outside prisons in camps and are to be forced to do heavy and heaviest labor..the introduction of corporal punishment which the deputy of the Fuhrer has brought up for discussion has not been included in the draft. I cannot agree to this type of punishment. The procedure for enforcing prosecution has been abrogated, for it seemed intolerable that Poles or Jews should be able to instigate a public indictment. Poles or Jews have also been deprived of the right to prosecute in their own names or join the public prosecution in an action..From the very beginning it was intended to intensify special treatment in case of need; when this necessity became actual a supplementary decree was issued to which the Fuhrer's deputy refers to in his letter...." (GB-268, R-96)

Thus, there can be no doubt that Hess together with the other major war criminals is guilty of Crimes against Humanity.

Taking into consideration that among political leaders of Hitlerite Germany Hess was third in significance and played a decisive role in the crimes of the Nazi regime, I consider the only justified sentence in his case can be death.

I consider it my duty as a Judge to draw up my dissenting opinion concerning these important questions on which I disagree with the decision adopted by the members of the Tribunal.

Soviet Member, International Military Tribunal
Major General Jurisprudence

1 October 1946

s/ I. T. Nikitchenko

* PP. 353-356, 364.

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